

**This document is drafted solely for discussion during the October 24, 2016 Task Force meeting and should not be construed as legal advice or a final recommendation of the Task Force. The information contained herein does not necessarily represent the opinions or conclusions of the Task Force. The posting of this information does not create requirements or mandates.*

Rationale: Employees and employers both have interests in understanding their rights and responsibilities under the California Fair Pay Act (SB 358.) Under this law, employees have the right to inquire about their own wages, as well as their colleagues' wages, and to disclose their wages to others without fear of employer retaliation. This new legal guarantee is an important safeguard to ensure pay transparency and prevent a climate where pay discrimination can go unchecked simply because workers are not aware of it, or where workers fear for their jobs by seeking information about compensation among their colleagues. The new law also provides workers with greater information about legitimate differences for pay and provides a structure for compensation in which workers can compare their own jobs to workers in substantially similar jobs, and expect equal compensation.

Workers will benefit from educational materials that outline their rights under the Act, and provide guidance about how to speak with colleagues and their employers and how to file complaints with enforcement agencies (such as, the Labor Commissioner's Office of the California Department of Labor Standards and Enforcement (DLSE), the California Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC), and the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (OFCCP) if they believe they are not receiving equal pay to others in substantially similar jobs. In addition, workers are entitled to clear information that outlines how their rights under the California Fair Pay Act are similar to or in addition to existing state and federal laws, such as the California Fair Employment and Housing Act (FEHA), federal Equal Pay Act and Title VII of the Civil Rights Act.

Employers also have a need for clear guidance to assist them in understanding their obligation to employees who inquire about pay or who observe their employees discussing or disclosing their pay with others. Employers need to understand what additional responsibilities the California Fair Pay Act places upon them that go above and beyond the federal Equal Pay Act and Title VII of the Civil Rights Act, and how these responsibilities intersect with those responsibilities required by FEHA. In particular, guidance about the definition of "substantially similar" jobs and information about legitimate means to assess the composite skill, effort, responsibility and working conditions of jobs, so that equal wage determinations can be made is important to assist employers with compliance.

Public Guidance: The Implementation Subcommittee recommends guidance about how the federal Equal Pay Act, Title VII of the Civil Rights Act, Executive Order 11246, and the FEHA interact with the California Fair Pay Act and identifies how the Fair Pay Act contrasts with existing federal and state law in breadth of coverage, strength of protection and procedural requirements. In addition, information about how to challenge equal pay concerns under the California Fair Pay Act should be provided for workers, including how to file a claim with the Labor Commissioner's Office, relevant statute of limitations for filing, the investigation process, legal protections and remedies. Workers should also be provided with information on other federal and state venues by which they can file complaints of unequal pay so that a worker facing discrimination can choose the venue best suited for their particular circumstances and issues (i.e., statute of limitations filing deadlines, if their case involves additional non-gender related discrimination claims, and particular remedies sought).

The Subcommittee also recommends guidance for employer compliance with the California Fair Pay Act. The guidance should clearly identify how the Fair Pay Act requirements are stronger than the federal Equal Pay Act, Title VII of the Civil Rights Act and Executive Order 11246, how these requirements contrast with the FEHA, and offer principles for employers to follow when making determinations about jobs that are substantially similar within their establishments. In addition, it may be helpful for additional information to be offered that clarifies how the California Fair Pay Act compares with actions by other states for those employers that have multiple locations throughout the country.

The Implementation Subcommittee will draft guidance on these topics, particularly with regard to how the EEOC and OFCCP interpret "substantially similar" jobs under these various federal laws and how federal case law has also defined which jobs are comparable under Title VII of the Civil Rights Act, the Equal Pay Act and Executive Order 11246. The subcommittee will also prepare guidance on the different federal and California venues in which a worker facing gender discrimination can file a complaint, and how the procedures and protections of these venues intersect with respect to equal pay protection under federal and state law.

The Implementation Subcommittee anticipates that its work may inter-depend on or overlap with work of other Taskforce subcommittees, such as with the work of the Definitions, Enforcement and Challenges and Barriers subcommittees. We look forward to sharing information and coordinating with other subcommittees to timely satisfy all deliverables and provide our best guidance to the public.